Coordination by Compact: A Legal Basis for Interstate Library Cooperation

HARRY S. MARTIN

There are today more than 75,000 public, school and university libraries and information centers in the United States—a national resource serving all the American people.

Effective development and management of these library resources are essential for the continued progress of the nation in education, science, industry, agriculture, commerce, and foreign relations. Moreover libraries and information centers are now at a critical juncture in their development. . . .

Coordination is, at last, being achieved within individual States; however, coordination among the States, as well as between the States and the Federal government, is not yet a reality.

The development of such coordination and the formulation of comprehensive national and State policies for the enhancement of our library and information resources will be a prime objective of the White House Conference on Libraries and Information Services. . . .

The Committee stresses that it does not expect the White House Conference . . . to develop any compulsory national blueprint or master plan for library and information services.

On the contrary, the autonomy and diversity of libraries and information services must be continued.

But it is important, as well, that new patterns of cooperation and coordination be developed if the educational, economic, and cultural needs of the American people are to be attained.

House Committee on Education and Labor[1]

INTERSTATE LIBRARY COOPERATION is entering a new stage of development. As a result, new patterns of cooperation are emerging. A

Harry S. Martin is Associate Law Librarian, University of Texas at Austin.

possible, though perhaps improbable, alternative is federal enactment of the scheme presented by the National Commission on Libraries and Information Science.[2] A more likely alternative is more extensive use of the patterns of cooperation currently employed by libraries and state governments. After a brief survey of the variety of legal devices traditionally used to support library cooperation, this article will examine one device, the interstate compact, which holds great promise as a tool for coordinating interstate library services. The compact is currently used indirectly to support two kinds of library cooperation across state lines. However, the possibility for a more forceful, direct use of the compact approach has a potential of achieving the coordination requested by the House Committee on Education and Labor.

The choice of an appropriate legal base for interstate library cooperation will usually depend as much on operational and administrative criteria as on legal factors. There are few legal restrictions as such on interstate cooperation, and voluntary programs of various sorts have operated across state lines with some success. However, there is a paucity of legislation permitting or encouraging interstate library programs. This lack of enabling legislation has restricted the formal options open to such cooperative ventures and perhaps kept the scale of interstate library cooperative programs at a low level. The present concern is to identify a means by which the scale of these operations can be increased.

Various legal devices can be used to further interstate library cooperation. In addition, many nonlegal arrangements have traditionally played important roles in such cooperation. Placed on a continuum ranging from informal to highly formal patterns of organization, these devices include articles of incorporation, interstate compacts, and federal legislation. In the past, library cooperative endeavors have tended to be informal, local arrangements among similar types of libraries. There is some indication that the patterns of the past will not meet the needs of the future. Recent developments indicate a trend toward more formal, even governmental, connections among different types of libraries over a geographically large area. Interstate ventures, because of their scope, generally require detailed planning and very formal structures. Creating regional union lists or conducting interlibrary loan operations across state lines may prove to be relatively straightforward, but where state funds or formal governmental commitments to permanent service operations are

required, the situation becomes complex and informal arrangements prove inadequate.[3]

An informal agreement consists simply of a mutual decision to cooperate in certain activities. It is not binding on the parties, but has the disadvantage of not providing an unambiguous record of the transaction. In time, this lack of an official record can easily lead to confusion about the exact contour of the cooperative program. A recent survey of 125 library consortia indicates that 60 percent have been established by incorporation. Difficulties due to oral or poorly written agreements were singled out.[4] Wherever one library comes to depend on another, even if there is no transfer of funds, a written, enforceable agreement is especially necessary.

Contracts are enforceable agreements with many uses in library cooperation,[5] but they are limited in their scope and flexibility. A contract for some service usually leaves it to each party to determine how that party will arrange performance of the contract. Where ongoing service programs have to be coordinated, however, some mutually agreeable form of continuous administration is usually necessary, and it is difficult to cover such details by contract. Contracts envisage the specific performance of predetermined acts, not the evolutionary development of service programs. In dealing with commercial enterprises, however, contracts are the preferable device. One might argue that a library cannot enter a "cooperative" program with a commercial outfit. On the other hand, operations such as BIBNET (Bibliographic Network) can generate regional networks of a sort through a series of individual contracts for bibliographic services. With perhaps no more than a general idea of which libraries are or might become involved, an individual library could contract with BIBNET and find itself sharing a data base with several other institutions. To this extent, a network now exists. Developing further types of cooperative activity, such as sharing the resources covered by the data base, would, however, require further agreements.

The scope and nature of interestate library cooperation increasingly requires more than a simple listing of the activities in which the member libraries have agreed to cooperate. These activities, listed in Table 1, are so numerous and complex that continuous administrative supervision is necessary. Where such administration is handled by the regular staff of the member libraries, the results are predictably unsatisfactory.[6] A permanent administrative body is needed, operating under a set of by-laws which clearly define its duties and

TABLE I

List of Library Consortium Activities

Activity	Number of Consortia Currently Operating Activity	Percent	Number of Consortia Planning or Developing Activity	Percent
Reciprocal borrowing privileges	97	78	4	3
Expanded interlibrary loan service	80	64	9	7
Union catalogs or lists	78	62	24	19
Photocopying services	72	58	11	9
Reference services	50	40	16	13
Delivery services	44	35	14	11
Mutual notification of purchase	40	32	23	18
Special communications services	35	28	12	10
Publication program	34	27	14	11
Catalog card production	34	27	12	10
(Other) Cataloging support	33	26	18	14
Joint purchasing of materials	30	24	29	23
Assigned subject specialization in acquisitions	28	22	33	26
(Other) Acquisitions activities	22	18	21	17
Microfilming	21	17	9	7
Central resource or storage center	21	17	11	9
Bibliographic center	17	14	16	13
Joint research projects	17	14	18	14
Clearinghouse	15	12	13	10
Personnel training	15	12	21	17
User orientation program	14	11	13	10
Other	9	7	6	5
Bindery services	7	6	4	3
Recruitment programs	6	5	5	4

Source: Patrick, Ruth J. *Guidelines for Library Cooperation.* Santa Monica, Calif., System Development Corp., 1972, p. 71.

powers. Of seven library consortia recently selected for in-depth study and which were not subsidiary components of higher level consortia, two were incorporated, two had constitutions, two had written agreements, and only one had an informal agreement.

When operating a variety of service programs in several legal jurisdictions with a large capital investment, formal legal structures are clearly preferable to informal arrangements. The degree of formality, in fact, affects the powers which can be exercised by the organization as

well as the type and degree of financing available to it. A more formally organized and politically secure legal base lends itself to a greater number of services which can be offered under the basic agreement; in addition, fewer legal problems are likely to arise. On the other hand, formal agreements, constitutions, by-laws, etc., require a certain amount of planning and negotiation. Even more formal arrangements may require governmental approval. Many library consortia have been as interested in ease of establishment as in anything else. For that reason, those consortia that wished to be established as independent legal entities have, to date, generally sought incorporation as a nonprofit institution or affiliation with an existing interstate organization—usually one of the regional education consortia.

Corporate status—recognition as a legal entity which can sue and be sued in its own name—provides a liability shelter against individual financial responsibility for its directors. Corporate existence is not determined by human life span. The psychological effect of dealing with a corporation provides increased assurance in daily business transactions. Furthermore, the lines of authority, the rights of members, and the limitations to third persons become much more certain when incorporated. Incorporation tends to produce more orderly administration of an organization's affairs.[7] In addition, nonprofit corporations receive favorable tax status, as do contributions to them. Most library consortia will quaify for nonprofit status.[8]

The advantages of incorporation were recently recognized by the Research Libraries Group (RLG), a consortium of four major research libraries. The libraries of Harvard, Yale and Columbia Universities and the Research Libraries of the New York Public Library will each be represented on the board of directors. The group plans to explore cooperative acquisition, resource sharing, and conservation techniques through cooperative organization, and intends to build a common bibliographic system as well.[9] The RLG is the first major consortium to receive some opposition. Publishers have viewed the cooperative acquisitions program as a possible threat. But the most vigorous criticism of this "thieves' consortium" has been directed at the loan-by-photocopy program,[10] where the arguments raised against the National Library of Medicine in the *Williams & Wilkins* case[11] have been applied. If the criticism expands to legal action, RLG will be thankful for its incorporation.

The most famous library consortium incorporated as a not-for-profit organization is the Ohio College Library Center (OCLC) a nonprofit corporation chartered by the state of Ohio on July 6, 1967.

The stated purpose of OCLC is to "operate a computerized, regional library center to serve the academic libraries of Ohio . . . designed so as to become a part of any national electronic network for bibliographic communication."[12] In 1971, an on-line, computerized, shared-cataloging service became operational. Other subsystems are in varying stages of development.[13]

Membership in OCLC is restricted to academic libraries (both state and private) associated with institutions of higher education in Ohio which are operated exclusively for educational purposes and qualify as exempt organizations under Section 501(c)(3) of the U.S. Internal Revenue Code. The membership elects a board of trustees which in turn elects the officers of the corporations.[14] Administrative responsibility is centered in an executive director appointed by the board of trustees. Funding for OCLC operations comes from membership dues, user fees, and special grants or donations.

The impact of OCLC on the library profession has been considerable. Several groups of libraries have investigated the possibility of participating in this network, either by linking directly with the Ohio operation or by replicating it in their own areas. Others have adopted a more cautious approach. The fact remains that OCLC, after years of discussion, study and debate over the prospects of networking, actually put together a working, on-line cataloging system. Other networks such as NELINET and SOLINET are now linking with OCLC, with the eventual prospect of replicating OCLC programs separately. Whatever the benefits or disadvantages in modeling the technical components of a network after OCLC, duplicating its legal and organizational structure is an entirely different matter.

Incorporation in one state can take a variety of formats. OCLC is an eleemosynary or nonprofit corporation. Public corporations are sometimes established to operate some public utility, but are restricted to intrastate activities.[15] Business corporations operate for money, often in several states. In fact, there are several privately operated networks in operation at the present time. Information Dynamics Corporation's BIBNET is one example of a private, profit-oriented bibliographic network.[16] Mead Data Central's LEXIS operation is a special-purpose, computer-based information system aimed at lawyers.[17] While these privately owned networks can be expected to proliferate, they hardly form a model for regional library cooperation. Although their services might be purchased on a regional basis, a business corporation could only supply specific services, not coordinate regional library activities.

But is a nonprofit corporation any better? Interstate operations, even for a nonprofit enterprise, are necessarily more complex than intrastate functions. Instead of dealing with the laws of one jurisdiction, the laws of each state as well as appropriate federal regulations, must be considered. Selecting the state of incorporation is only the first step. The purposes and activities of the network must conform to the requirements of each state's nonprofit corporation act. In addition, network operations may end up being closely regulated by a different set of state agencies in each state.[18]

However, while interstate network operations may be more complex legally than intrastate ones, the legal barriers are not insurmountable. Incorporation in one state as a nonprofit entity is a feasible way of offering certain computer-based services to a multistate area, insofar as the narrow questions of legality are concerned. But there are larger-scale problems involved. A limited corporation may be an inappropriate vehicle for coordinating what is increasingly being viewed as a public resource, namely, the provision of library and information services.[19] Millions of dollars are spent each year by the states and the federal government on library services. Many states are coordinating these services into state networks.[20] Librarians themselves are pushing for recognition of information as a public asset and of library and information networks as a public utility. Coordination of public utilities and disbursement of governmental monies cannot be left to a private, nonprofit corporation.

Coordination of state networks and development of regional library services are areas in which the contributions of traditional cooperative approaches are necessarily limited. If regional interstate library networking were merely a matter of providing low-cost services designed to encourage a sharing of resources, this might not be so. What is really involved, however, is the effective administration of a high-cost public service with political overtones on a multistate basis. For interstate activities at this level, a legal instrument is needed which will have equal effectiveness in each state involved. That requires governmental participation, and the only alternatives are: (1) assumption of responsibility and control by the federal government, perhaps through a federal corporation like the Tennessee Valley Authority; or (2) resort to an interstate compact to create a multistate agency.

In theory, the nature of the federal system does not take into account the existence of interests of areas more comprehensive than states yet less inclusive than the nation. The region does not have a formal legal

place in the political system. Rather it must gain its institutional character by federal, interstate or joint federal-state action.[21] Moreover, a regional organization lives a precarious existence since it must serve regional interests without subverting national or state goals. Nevertheless, regional institutions have gained increasing prominence. Richard Leach calls regionalism "a major new development in modern American Federalism."[22] A lead story in the *National Observer* proposed replacing the fifty states with twenty regional republics.[23] In 1972, President Nixon "established a Federal Regional Council for each of the ten standard Federal regions."[24]

Each of these councils is composed of the directors of the regional offices of the Departments of Labor, Health, Education and Welfare, and Housing and Urban Development, the Office of Economic Opportunity, the Environmental Protection Agency, and the Law Enforcement Assistance Administration, and a secretarial representative from the Department of Transporation. The function of each Federal Regional Council is to have the participating agencies conduct their grantmaking activities in concert through: "the development of long-term regional interagency and intergovernmental strategies for resource allocations to better respond to the needs of states and local communities."[25]

The creation of federal-state commissions, aimed at improving the economic conditions of certain depressed areas of the country such as Appalachia and the Ozarks, is a further example of the federal government's willingness to adopt a regional view in certain types of problem-solving administration.[26] There are many other examples of such regional orientation by the national government. One of the earliest and best known is the Tennessee Valley Authority (TVA). TVA is, perhaps, a classic example of a federal agency organized on a regional basis, the region in this instance being the valley of the Tennessee River and its tributaries, an area encompassing portions of seven states. The act which set up the authority in 1933 gave it the power to improve the navigation and to provide for the flood control of the Tennessee River, to provide for reforestation and the proper use of marginal lands, and to provide for the agricultural and industrial development of the valley.[27] From this act, TVA developed an amazing number of activities, including navigation, flood control, power operations, fertilizer and munitions research and development, forestry and soil conservation, recreation, malaria control, education, and even library development.[28] TVA is a federal agency, established

by Congressional legislation in an area in which the federal interest is clear.

The Commerce Clause would also be one possible source of Congressional authority over the knowledge and information resources of the country. In addition, the taxing and spending power of the federal government has been accepted for some time as nearly unlimited,[29] and the use of grants-in-aid could possibly establish an agency resembling TVA.[30] The current pattern for such a federally organized regional library network lies in the ten regional medical libraries established under the Medical Library Assistance Act of 1965.[31] The regional node of this network was not established by constructing a new facility, but by grants to an existing public or private nonprofit medical library with the potential for serving as a regional medical library. The funds were actually made available through performance contracts, as the libraries had to meet certain standards and agree to certain conditions. Network development within each of the ten regions is not yet highly developed. No regional medical library has yet begun operating an interstate bibliographic network of the OCLC type, for instance. As legal entities, however, they are well suited to this purpose.

If federal initiative in library networking were limited to scientific and technical fields in the foreseeable future, it would be quite understandable. Medical research has been given high priority to date. The Committee on Scientific and Technical Information (COSATI) and the Committee on Scientific and Technical Communication (SATCOM) serve as foci for similar interests.[32] Nevertheless, many political scientists have pointed out a gradual shift of power from the states to the federal government over the last century.[33] The trend identified is the transfer of effective power of political decision-making to higher governmental levels encompassing wider geographic areas. Common examples are the transfer of major social welfare responsibilities from the states to the federal government and the transfer of major business regulation to such agencies as the Interstate Commerce Commission and the Securities Exchange Commission. More recent examples indicate an expansion of these centralization tendencies to include the allocation of natural resources and control of the quality of the environment. Increasing concern with library networking in itself may be anticipating an inherent tendency to organize information resources over a wider region, as was proposed by the National Commission on Libraries and Information Science,

and as will be discussed in the upcoming White House Conference on Library and Information Services.

State governments have been aware of this increasing centralization of power for some time. The moans over federal encroachment on states' rights were once quite prevalent. In recent years, states have begun to adopt intermediate devices for regional centralization of power and thereby retard the giving up to the federal government of many areas of interestate concern. The device most frequently used has been the interstate compact.[34]

The interstate compact provides the states with the treaty-making power of independent sovereign nations.[35] Although an interstate compact is almost always enacted as a statute in each jurisdiction which is a party to it, compacts effectively act as contracts between the signatory parties.[36] The potential of such interstate agreements for disruption of the federal fabric is so great that a clause was inserted in the U.S. Constitution governing their use; Article I, Section 10 absolutely prohibits states from entering into treaties with foreign powers, and conditions the right of a state to enter into an agreement or compact with another state upon the consent of Congress.[37] Subsequent interpretation by the U.S. Supreme Court established the rule that only those agreements which affect the political balance within the federal system or which affect a power delegated to the national government must be approved by Congress.[38] As a practical matter, Congressional consent is sought and obtained in almost every case. Sometimes Congress will even grant advance consent to interstate compacts to encourage state cooperation in fields where Congress would like to see more action.[39] Failure to obtain Congressional consent is not necessarily destructive, as the Constitution does not specify either a time or method for Congressional approval. Furthermore, consent may be inferred. Failure of Congress to object actively to the continued operation of the Southern Regional Education Compact may well indicate an informal, implied grant of consent,[40] especially since segregation in the operation of the Southern Region Educational Board facilities is no longer the issue it was when the debate over approval by Congress took place. In addition, extensive debate at the time over the question of consent to this compact characterized the agreement as being of such character as not to require Congressional approval in the first place.[41]

Initially, the use of the compact device was restricted to the settlement of boundary disputes.[42] In fact, until the landmark Colorado River and New York Port Authority compacts of the 1920s,

nearly every interstate compact in existence concerned boundary matters in the narrowest sense.

In the last fifty years, however, states have been much more creative in their use of compacts. Now, in addition to settlement of interstate disputes, compacts are used to establish mutual aid programs, to set up study and recommendatory commissions, to regulate multijurisdictional resources, and to provide a variety of interstate services.[43] From one-time resolution of interstate disputes, the compact has evolved into a device which is increasingly used to establish agencies concerned with the indefinite long-term administration of continuing interstate problems.

Although more than 150 compacts of varying types are now in existence, no detailed classification scheme yet exists.[44] For our purposes, however, four categories of interstate compacts are of interest.[45] First, there are natural resource development or public welfare compacts, such as the water and fishery compacts. The interest being protected or fostered is general to the entire region involved. User charges are negligible, but it is reasonable and politically acceptable to resort to general state revenues for supporting funds. Interestingly enough, informal federal involvement in this type of compact is common. Congress regularly appropriates funds for operating costs to incerstate compacts in the field of conservation and water apportionment. Under the Atlantic and Gulf States Marine Fisheries Compacts, the U.S. Fish and Wildlife Service performs research for the compact commission. The focus of this type of compact is on the proper use of existing resources.

Regulatory compact agencies, also supported as a rule by the general budget of the signatory states, provide no services of their own but are empowered to make rules for the smooth coordination of activities that cross state lines. These agencies will often operate in one of the thirty Standard Metropolitan Statistical Areas which occupy portions of more than one state. The Washington Metropolitan Area Transit Regulation Compact, to which Maryland, Virginia, and the District of Columbia are parties, is an example of this type. This compact creates a bus-taxi regulatory commission designed to regulate routes and rates and encourage better service in the greater Washington area.

Self-sustaining proprietary service compacts, where revenue bonds and user charges carry nearly all of the financial burden, are perhaps the most famous category of compacts because of the well-known example, the Port of New York Authority, which has evolved into an agency with more power and greater financial resources than many

state governments. As such, many persons look to it as the prototype for all compacts. However, as one commentator pointed out, this overlooks the fact that the authority was created and is being sustained by a set of conditions which probably do not obtain elsewhere, whether the goal be service, regulation, or resource development.[46]

Another cateogry of compact—and one into which regional library networks will probably fall—is the non-self-sustaining proprietary service compact, designed to create and operate large-scale projects where revenue bonds and user charges may not be able to carry the bulk of the financial burden. This is the category into which most future interstate service compacts will fall if they make a serious effort to handle non-self-sustaining high-cost governmental functions.

The application of interstate compacts to library networks is not entirely theoretical; in fact, more than twenty-five states have adopted an Interstate Library Compact. Illinois adopted the first compact in 1961.[47] In 1962, the Council of State Governments developed a variant version at the request of the New England state librarians.[48] The Illinois form is used primarily in the Midwest, and the Council of State Governments version elsewhere. Two states, North Dakota and Minnesota, have different versions, which raises theoretical problems at least, since evidence of an agreement between states normally requires that each state enact the compact in substantially identical versions. The two versions of the Interstate Library Compact are, in fact, quite dissimilar in form, although the thrust of each might be said to be similar.

Both versions of the Interstate Library Compact are primarily concerned with permitting local libraries to enter cooperative arrangements with libraries in contiguous states, "where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service."[49] The primary emphasis here is on the interstate metropolitan area. Each version of the compact designates a compact administrator who, unless granted other powers by his state, primarily serves as a clearinghouse and depository for any interstate agreements entered into by libraries within the state. The Council of State Governments version, as passed in New York, provides for the creation of interstate library districts by interested public library agencies and authorizes cooperative programs between state library agencies of the party states.[50]

The Interstate Library Compact would be an awkward vehicle for

the creation of a regional network, specifically because no separate commission or agency has been established to plan and operate a network, nor have any funds been committed for such a purpose. The Council of State Governments also takes the view that the limited scope of the compact excludes it from the requirement of Congressional consent.[51] Thus, the creation of an interstate metropolitan library authority along the lines suggested by Alex Ladenson would probably require an interstate compact aimed at that specific purpose.[52] Since many large metropolitan areas encompass portions of several states, compacts establishing interstate metropolitan library agencies may be even more useful than regional compacts covering several states. On the other hand, the concerns of each probably differ so much that they require both.

There is one regional library network which does derive legal authority from an interstate compact. NELINET (New England Library Network) is a sponsored program of the New England Board of Higher Education (NEBHE) and holds legal status by virtue of that sponsorship. NEBHE is a nonprofit educational corporation, according to the NELINET statement of policies and procedures.[53] Actually, the board is a creature of compact, designated by the New England Higher Education Compact as the administrating body of the compact and specifically established as an agency of each state party to the compact.[54] Nevertheless, NELINET apparently prefers to view itself as an agent of a nonprofit corporation and, like OCLC, restricts membership to "any not-for-profit library, library agency or library consortium in the New England region."[55] Nonprofit libraries outside the six-state region may be granted affiliate membership.

NELINET staff members are employees of NEBHE. The director is appointed by the executive director of NEBHE with the advice and consent of the executive committee of NELINET. All fiscal and administrative support for NELINET is rendered directly by NEBHE, which retains a final veto power over all NELINET operations.

This retention of control by NEBHE over all phases of NELINET activities is interesting. Perhaps there was some doubt about the propriety of establishing a library network by an agency charged with providing "a co-ordinated educational program for . . . the several states of New England . . . with the aim of furthering higher education in the fields of medicine, dentistry, veterinary medicine, public health and in professional, technical, scientific, literary and other fields."[56] That is a broad mandate, of course, but it might be interpreted as restricting NELINET activitites to providing library

support services within an educational context. Subject to control by the NEBHE, NELINET is free to operate as a regional legal entity.

NELINET serves as a possible model for a regional network because of the existence of two other regional educational commissions. The Western Education Compact binds thirteen western states in a program aimed primarily at sharing existing training facilities in graduate and professional education, thus expanding the pool of technically trained graduates in the health and other professions without the necessity for each state to develop comprehensive programs in a variety of fields.[57] The compact was approved by Congress in 1953 and is patterned after the Southern Regional Educational Compact, which had failed to gain such consent a few years earlier, largely because of opposition from the NAACP and other civil rights organizations.[58] Nevertheless, both the Western Interstate Commission for Higher Education (WICHE) and the Southern Regional Education Board (SREB) continue to sponsor a wide range of regional programs for graduate, professional and technical education.

Under WICHE, for example, residents of New Mexico and Alaska (states with no graduate programs in library science) may attend library school in one of the other western states and, under the graduate student exchange program, pay lower tuition rates than they would otherwise. The program is limited to residents holding four-year college degrees, and students must meet the standard admission requirements of the library schools. They must also apply to their home states for certification of eligibility in the graduate student exchange program. The home states pay $2,500 per two semesters or three quarters to the accredited graduate library school for each certified student who attends. WICHE acts as broker and referee for the program, which encompasses many fields of study; library science was added in 1973. A second library education program sponsored by WICHE is the Continuing Education and Library Resources Program, designed to improve the delivery of library and information services in the western states through programs of continuing education for personnel at all levels and in all types of libraries. The program is also responsible for promoting cooperation among the states through the sharing of library resources.

A recent survey of academic library consortia revealed a consensus that being a component of a larger consortium encouraged the developmental progress of the library consortium.[59] One reason for this is that a good track record in other areas will stimulate and assist library cooperation. In addition, the larger body offers a forum for

airing library concerns before users and administrators. Furthermore, the existence of the larger group provided an opportunity for cooperation that libraries might not have developed on their own. Existing physical facilities, administrative support and funding sources are already available and do not have to be developed from scratch. Furthermore, the approval of institutional presidents for library cooperative programs is more forthcoming where the institutions are already cooperating in other areas.

On the other hand, membership in an educational consortium is restricted, which limits its use as a tool for interstate library cooperation. Some federal funds are marked for use by all types of libraries. Some projects might require the participation of nonacademic libraries. Some institutional presidents are still interested in protecting their autonomy. A clear disadvantage to membership in an existing consortium is the necessity to compete for consortium funds with other components or projects of the larger group.[60] The use of an interstate compact on education may be geographically restricted. Although the Southern Regional Education Compact specifically permits signatory states to enter supplemental agreements applicable to a portion of the member states,[61] no provision exists allowing states not members of the compact to enter into such agreements on an equal footing with member states. For states without an existing interstate compact capable of providing an umbrella agency for library cooperation, the alternative for establishing interstate library programs is by a separately enacted compact, designed to fit the requirements of the region involved and requiring specific state political and financial support.

Compacts are essential to any nonfederal interstate undertaking of a formal, binding nature.[62] They represent a special commitment of a state to a permanent or long-range interstate undertaking. Compacts take precedence over ordinary state statutes;[63] by superseding the laws of individual states in much the same manner that federal legislation is supreme over state legislation, compacts avoid the various conflict-of-laws problems involved in ordinary interstate business transactions. As programmatic devices, compacts are quite useful. They have the potential for greater state achievement in interstate problem-solving, although they also represent diminished state autonomy in decisions on the same matters.

Despite this last fact, state governors are enthusiastic supporters of this device because of its merits as a tool of executive action.[64] Governors generally retain limited power over state government,

especially when compared to the federal chief executive. An interstate compact frequently enables a governor to tap federal grants-in-aid and resources of sister states not otherwise available to him in promoting his own state's program. It also removes some of the legal barriers to solving regional interstate problems. Poverty in the Appalachian area, for example, can only feebly be attacked by each of the Appalachian states operating alone; together, with the assistance of the federal government's massive resources, constructive improvements can be obtained. Since most interstate compacts provide a governing board or commission for their administration, almost always comprised of gubernatorial appointees and by law required to report to him, the governor's control over his state's bureaucracy is somewhat enhanced. This latter point, however, is a double-edged matter. His control over his state's functioning may become more complicated, less flexible, and more burdened with interstate obligations which must be met if the compact is to succeed. The feature that probably has always been attractive to states' rights proponents—the assumption of state authority by compact in a realm which may easily be preempted under federal control—is that which especially pleases the governors. Whatever the reasons, they have shown repeatedly that they like this method of handling interstate problems.

Another strong advocate of interstate compacts is the Council of State Governments, which has yet to deny the merits of any compacts already on the books and which has repeatedly utilized as exemplary models such powerful interstate arrangements as the Port of New York Authority, the Delaware River Commission, the Interstate Oil and Gas Compact, etc.[65]

Interstate compacts are still essentially experimental in the American system. Their full potentialities remain untapped. Within the last few years, a new type of compact has emerged with even greater potential for handling large-scale regional operations in an effective way, yet in such a manner as to retain a large element of local control. The federal-interstate compact offers the most direct alternative to the federal agency model for handling multistate affairs.[66] The model for this type of agency is the Delaware River Basin Compact.[67]

The Delaware River Basin Compact created a regional agency with territorial jurisdiction over the area of the Delaware River Basin, including areas of the signatory states (Pennsylvania, New York, New Jersey, and Delaware). The agency is to develop water resources, control water quality, improve flood control, operate facilities for the

generation and transmission of hydroelectric power, and set rates and charges for such power. The implementing powers granted by the signatories include: borrowing and bond issuing powers, with a pledge of the credit of the agency but not that of the signatories; the power of eminent domain; and the power to adopt necessary rules and regulations to effectuate the varied purposes of the agency. Provision is also made for capital fund contributions from the signatories in accordance with cost-sharing provisions previously agreed to, but subject to the legislative appropriation of the respective parties. No mandatory obligation is imposed on any signatory with respect to finance. No individual, corporate, or political body in the basin may undertake erection of water facilities in the basin unless the agency approves by including that facility in the comprehensive plan.

Finances have been placed on a voluntary basis despite an anticipated deficit in the operation of various agency projects. In dealing with appropriations, the compact makes no distinction between the actual area of the basin and the whole area of the signatories; that is, the compact sets up no "appropriation districts" within the states.

The federal government agrees to substantially the same terms except that its agreement is subject to the provision that: "Nothing in this compact shall be construed to relinquish the functions, powers or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, nor shall any provision hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the States and with foreign nations."[68] Further reservations of federal power are found in a provision for congressional approval of any water project, and in the power "to withdraw the federal government as a party to the compact or to revise or modify the terms, conditions and provisions under which it may remain a party by amendment, repeal or modification of any federal statute applicable thereto."[69] Under the allocation-of-cost formula, the federal government will provide about one-half of the financing of the comprehensive plan for the Delaware River Basin Compact.

The agency which is to exercise the compact powers consists of five members, one from each of the signatory states and one representing the federal government. Each has one vote, and no action is to be taken except on a majority vote of the total membership.

Although the validity of the several compacts which the federal

government has entered has not been litigated in the courts, the U.S. Supreme Court repeatedly has expressed itself in favor of the compact device to solve regional problems.[70]

There also would seem to be little merit in the possible objection that federal entry into a federal-interstate compact with regulatory powers would amount to an unlawful delegation of regulatory powers over interstate commerce. Congress has been said to have a broad choice of regulatory agencies to carry out the law in areas in which the federal power to act is clear,[71] and the doctrine is well established that Congress may confer upon the states the power to regulate commerce in ways they otherwise could not.[72] Even without an expressed reservation such as that contained in the Delaware River Basin Compact, it would seem that under the supremacy clause alone, the federal would prevail in the event of conflict between a compact policy and a subsequently enacted federal policy.[73]

A federal-interstate compact seems to be an ideal form for channeling federal funds into multistate services while retaining a high degree of state participation. A federal authority on the TVA model would assume control of local and state facilities built up over years of effort and sensitivity to local priorities. Eschewing federal assumption of regional functions in favor of the compact device encourages a responsiveness to the people being served.[74] The independent federal agencies (e.g., Interstate Commerce Commission, Federal Trade Commission, and Federal Communications Commission) amount to a fourth branch of government, and are the least accountable, most independent branch of all.[75] While interstate compacts have not been noted for their responsiveness—largely because of the reputation of the Port of New York Authority for independent action—and despite the fact that federal agencies can demonstrate a high degree of sensitivity to the people they regulate, on the whole, a compact device offers more opportunity to construct a mechanism for accountability and responsiveness than does an independent federal agency.

A federal-interstate compact has a further advantage. Whereas the consent statute to a normal insterstate compact does not impose a binding obligation on the federal government to support the compact,[76] a federal-interstate compact is binding on the agencies of the federal government to uphold and support the agreement. In the words of the Advisory Commission on Intergovernmental Relations: "No other legal device available within the Federal system comes this close to placing Federal activities within the same regimen as those of States, and no other instrument has ever defined a Federal-State

relationship in an operational field in terms so closely approaching parity. Of course, it is not the governments themselves that are so described. Rather it is the joint agency which is their common instrument and the compact which is their mutual obligation."[77]

The National Commission on Libraries and Information Science has presented the library profession with the opportunity to participate in a complete restructuring of the nation's library services. Developments in the last few years indicate that regional interstate networks or cooperative programs that cross state lines will be important components of a national program. While the organization and structuring of interstate cooperative library services will continue to rely on traditional legal devices, opportunities exist for basing such activities on the creative use of legal approaches new to library services. One such device, deserving the careful examination of anyone engaged in establishing an extensive program of interstate library services, is the interstate compact. The compact has proven its value in many other areas of American federalism. The time may have arrived for its application to the coordination of the nation's information resources.

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